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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,828	09/28/2006	Rainer Opolka	23500	8329
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EXAMINER LEE, Y'MY QUACH				
ART UNIT 2885		PAPER NUMBER		
NOTIFICATION DATE 07/10/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

EMAIL@KFRPC.COM

Office Action Summary

Application No.

10/594,828

Applicant(s)

OPOLKA, RAINER

Examiner

Y M. Lee

Art Unit

2885

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/9/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-34 is/are allowed.
- 6) ☒ Claim(s) 23-30, 36, 41, 42 and 44 is/are rejected.
- 7) ☒ Claim(s) 31, 35, 37-40 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 23 to 30, 36, 41 (misnumbered claim 40, note objection to claims below), 42 (misnumbered claim 41, note objection to claims below) and 44 (misnumbered claim 43, note objection to claims below) have been considered but are moot in view of the new ground(s) of rejection.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature of "the releasable means are a plug on the housing and a jack connected to the wiring and releasably engaged in the plug" as claimed in claim 31, the feature of "the body is pivotal on the packaging material" as claimed in claim 43 (misnumbered claim 42, note objection to claims below) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The substitute specification filed April 9, 2008 has been entered.

Claim Objections

4. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 39, second occurrence, has been renumbered as claim 40.

Misnumbered claims 40 to 43 has been renumbered as claims 41 to 44.

5. Claim 35 is objected to because of the following informalities: In claim 35, line 4, there is a typographical error such as the term "form". Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 23 to 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Dalton et al.

Dalton et al. show in combination with a flashlight (14) having a housing (19), a battery (22) in the housing, a light source (24) on the housing, a circuit (figure 1) between the battery and the light source and a switch (32) actuatable to energize the light source, a package (12) comprising packaging material (paragraph 0034, line 2) enclosing the flashlight, an externally actuatable package switch (66) separate from the housing switch and carried on the packaging material, wiring (62, 64) connected between the package switch and the circuit of the flashlight such that the package switch is actuatable to energize the light source, releasable means (40, 46, 48) connecting the wiring to the circuit for disconnection of the wiring and package switch from the circuit on separation of the flashlight from the package, the package switch connected by the wiring in parallel to the housing switch (figures 1, 2, 5 to 8), wherein the package switch is a momentary contact switch (paragraph 0066, line 9), the releasable means includes break points connected between the wiring and the circuit (figures 1, 2, 5 to 8), the releasable means includes contacts (52, 54, 84, figures 1, 2, 5 to 8) on the circuit releasably connected to the wiring, the releasable means is a removable cap (40) fittable on the housing and to which the wiring is connected, and the packaging material wholly encloses the flashlight and must be destroyed to remove the flashlight from the package (paragraph 0034, lines 2 and 6).

8. Claims 42 and 44 are rejected under 35 U.S.C. 102(c) as being anticipated by Dalton et al.

Dalton et al. show in combination with a flashlight (14) having a housing (19), a battery (22) in the housing, a light source (24) on the housing having a light output opening (figure 1, the opening where light emitting through), a circuit (figure 1) between the battery and the light source and a momentary contact switch (32) on the housing and depressible into a first position to energize the light source and project light from the opening, a package (12) comprising packaging material (paragraph 0034, line 2) enclosing the flashlight and elastically deformable region of the switch, an externally actuatable package switch (66) separate from the housing switch and carried on the packaging material, wiring (62, 64) connected between the package switch and the circuit of the flashlight such that the package switch is actuatable to energize the light source, means including a body (figure 1, reflector or lens of the flashlight) fixed on the housing in alignment with the light output opening for reflecting or refracting light emitted by the light source, and wherein the packaging material has a transparent portion extending between the source and the body (paragraph 0034, line 2, the packaging material is transparent).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 36 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forest in view of Sinclair (prior art previously cited).

Forest discloses in combination with a flashlight (10) having a housing (figure 1), a battery (inherent feature of the flashlight) in the housing, a light source (figure 2, column 1, line 40) on the housing, a circuit (inherent feature of the flashlight) between the battery and the light source, a momentary contact switch (18) on the housing and depressible into a first position (press toward the electrical contacts of the switch) to energize the light source, a package (20) comprising packaging material (column 1, line 55) enclosing the flashlight (figures 1, 2) and elastically deformable (20') in a region of the switch, the switch shiftable past the first position into a second position (contacts between electrical connection) in which maintains energization of the light source from the battery, and the switch constructed such that repeated shifting into

the second position disrupts the energization and turns off the light source (conventional features of the switch, column 1, lines 49 to 54). However, Forest does not disclose an actuating element connected to the switch and projecting from the housing and actuatable to shift the switch into the first position.

Sinclair teaches an actuatable element (figure 2, the element press) of a package (22) corresponding to and connected to a switch (35) and projecting from the housing and actuatable to shift the switch into the first position.

It would have been obvious to one skilled in the art to provide the package of Forest with an actuatable element, as shown by Sinclair, for corresponding to and connected to the switch to properly actuate the switch to shift the switch into the first position to energize the light source.

11. Claims 31, 37 to 40 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 35 would be allowable if rewritten to overcome the objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. Claims 32 to 34 are allowed.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Monday to Thursday from 8:30 am to 2:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding

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should be directed to the customer service 571-272-2815.

Y. Q.

June 26, 2008

/Y M. Lee/

Primary Examiner, Art Unit 2885